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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,076	02/11/2004	Salvatore Cirillo	14324-3US RM/bs	3313
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OGILVY RENAULT LLP 1981 MCGILL COLLEGE AVENUE SUITE 1600 MONTREAL, QC H3A2Y3 CANADA			EXAMINER HAYES, BRET C	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/775,076

Applicant(s)

CIRILLO, SALVATORE

Examiner

Bret C. Hayes

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,8,10-11, 15,16,18,19 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) 12,13 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 and 22 is/are allowed.
- 6) ☒ Claim(s) 1,3,4,8,10-11, 15,16,18,19 and 23-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 4, 8, 10, 11, 15, 18, 19 and 23, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker as previously cited in view of US Patent No. 4,574,105 to Donovan (previously cited).
3. Re – claims 1, 23, 26 and 27, Barker discloses the claimed invention including a container comprising: a seamless enclosure **32** made of walls defining a first open end, best seen in Fig. 1, for example, and a first closed end*, the seamless enclosure being collapsible**; an outer casing **34** having a plurality of first and second panels, as in opposing sides of the container itself, defining a second enclosure for snugly receiving the seamless enclosure **32**, the first and second panels being rigid, the first panels being hingedly connected*** to the second panels such that the first panels are movable** between a first deployed configuration, where the first panels define a second open end corresponding to the first open end, to a second folded configuration, where the first panels at least partially close the second open end, thereby reducing a height of the outer casing **34**; and a first attachment system**** on the outer casing **34**.
34. Regarding the functional “whereby” clause, as long as the device as disclosed by Barker is capable of performing the intended use, it anticipates the claim. In this case, the container of Barker is capable of ‘[being] folded for storage by collapsing the seamless enclosure and moving

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the first panels of the outer casing in the second folded configuration'. The first and second configuration being a container as shown in the Figures and the same container 'flattened' and, thus, folded.

*Barker discloses an expandable bag 32, which 'bag' is generally understood to have a first open end and a first closed end – such as the grocery bags I saw the last time I was at the grocery store leastways. Further, the definition of the term 'bag' would be understood to include an open "top" and a closed "bottom", for example.

**It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138. In this case, any "-ble" type terms, i.e., collapsible, are intended to be covered by the above. Barker's device need only be able to so perform, which it is.

***Most shipping containers of this type have panels, which are hingedly connected in order to fold the containers for shipment in bulk (flat), for example, and to unfold the containers for placing items to be shipped inside.

****In this case, the first attachment system is the top or bottom flaps of the container.

Barker discloses the claimed invention except for the walls being formed by a plurality of independent interleaved plies of material, the material and number of plies being selected to contain fragments projected by the explosion. Donovan teaches walls 10 being formed by a plurality of independent interleaved plies of material 12 and 16, the material and number of plies being selected to contain fragments projected by the explosion in the same field of endeavor for the purpose of containing fragments projected by an explosion. It would have been obvious to

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one of ordinary skill in the art at the time the invention was made to modify Barker to include the walls as taught by Donovan in order to contain fragments of an explosion.

Specifically regarding claim 27, the walls of the enclosure (a bag) would inherently have a constant thickness. One would need motivation to alter what has become the norm in bags.

4. Re – claim 3, Barker in view of Donovan discloses the invention as claimed. Barker further discloses an inner casing 22, 24, 26, 28 snugly surrounded by the foldable bag 32, see FIG. 2, for example, the inner casing 22, 24, 26, 28 having a plurality of third and fourth panels, the same 22, 24, 26, 28, and the panels being composed of a blast mitigation material, 4:63, except for the third panels being hingedly connected to the fourth panels. Since Barker discloses the outer casing 34 having the same structure as the claimed inner casing, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Barker to substitute the structure of the outer casing for the disclosed inner casing, since doing so would essentially consist of duplicating and rearranging parts of the invention, and, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art [*St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8], and, since it has been held that rearranging parts of an invention involves only routine skill in the art [*In re Japiske*, 86 USPQ 70].

5. Re – claim 4, Barker in view of Donovan discloses the claimed invention. Barker further discloses the material being “made from a suitable fragment resistant fabric such a woven ballistic cloth,” except for the material being composed of an extended chain polyethylene fabric. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute such a fabric, since it has been held to be within the general skill of a worker

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in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

6. Re – claim 8, Barker in view of Donovan discloses the claimed invention except for the first and second panels being composed of a rigid foam core sandwiched between two sheets of polyethylene. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first and second panels be composed of a rigid foam core sandwiched between two sheets of polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. Re – claim 10, Barker in view of Donovan discloses the claimed invention. Barker further discloses the outer casing and foldable bag having a prismatic shape, in that “prismatic” in this sense is taken to mean opposing bases or ends having the same shape, that shape being a parallelogram and a parallelogram being a four-sided plane figure with opposite sides parallel.

8. Re – claim 11 and, alternatively, claim 10, it would have been obvious to one having ordinary skill in the art at the time the invention was made to implement a prismatic shape, since there is no invention in merely changing the shape or form of an article without changing its function except in a design patent. *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23. See US Patent No. 6,196,107 B1 to Hoffman et al., FIG. 18, for an example of an alternatively shaped containment vessel.

9. Re – claim 15, in view of claims 1, 10 and 23 above, Barker in view of Donovan discloses the claimed invention.

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10. Re – claim 18, in view of claims 1 and 23 above, Barker in view of Donovan discloses the claimed invention.

11. Re – claim 19, in view of claims 1, 4 and 23 above, Barker in view of Donovan discloses the claimed invention.

12. Re – claim 24, Barker in view of Donovan discloses the claimed invention. Donovan further teaches the interleaved plies of material extending in alternating orientations, orthogonal to each other. Because Donovan shows the plies one on top of the other, as in Figs. 1 and 2, it would be inherent that the plies 1) extend, and 2) in alternating orientations, orthogonal to each other, since one ply on top of another is “alternating orthogonally orientated” 90 degrees out of phase with the adjacent preceding ply.

13. Re – claim 25, Donovan further teaches the materials being in the form of elongated flexible woven strips. Donovan discloses its use in curtains, which are inherently elongated and the material so used would be in flexible woven strips.

Allowable Subject Matter

14. Claims 21 and 22 are allowed.

Response to Arguments

15. Applicant's arguments with respect to claims 1, 3, 4, 8, 10 – 13, 15, 16, 18, 19 and 23 – 27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (571) 272 – 6902. The examiner can normally be reached Monday through Friday from 5:30 am to 2:00 pm, Eastern Standard Time.

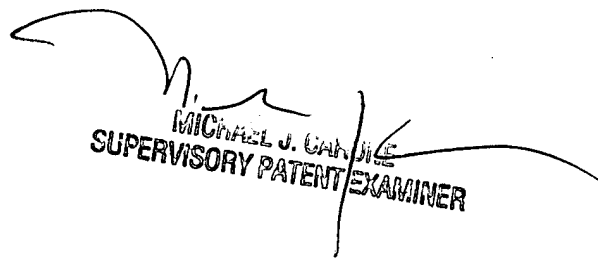
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The Central FAX Number is **571-273-8300**.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (571) 272 – 7045.

bh

23-Nov-05


MICHAEL J. CANALE
SUPERVISORY PATENT EXAMINER